

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

IN RE: TESTOSTERONE
REPLACEMENT THERAPY
PRODUCTS LIABILITY LITIGATION

MDL No. 2545

Master Docket Case No. 1:14-cv-1748

Honorable Matthew F. Kennelly

THIS DOCUMENT RELATES TO ALL
CASES

**PLAINTIFFS' STEERING COMMITTEE'S RESPONSE TO MOTION TO
EXPAND THE COMMON BENEFIT FEE COMMITTEE AND FOR THE
APPOINTMENT OF STEPHANIE O'CONNOR TO THE COMMON BENEFIT
FEE COMMITTEE**

Comes the Plaintiffs' Steering Committee ("PSC") by and through Co-Lead Counsel, and in response to the Motion to Expand the Common Benefit Fee Committee and for the Appointment of Stephanie O'Connor to the Common Benefit Fee Committee, states as follows:

At the outset, leadership believes it is important to acknowledge that we appreciate the work that Ms. O'Connor performed in this case as set forth in her motion. She and numerous other lawyers performed very important work that led to the settlement of these cases. Leadership, however, could not put every lawyer on the Fee Committee who made important contributions to the litigation. It is the job of the Fee Committee to fairly assess everyone's contributions, whether one played a major or minor role, and make recommendations to the Court that are fair.

The Court Has Appointed the Fee Committee

The Court's order established a deadline of October 26, 2018 by which nominations were to be made for appointment to the Fee Committee. (Dkt. No. 2894).

After careful and painstaking consideration of dozens of qualified candidates, leadership nominated six individuals for the Court to appoint to an odd-numbered committee, as required by CMO 16. Ms. O'Connor's firm put forth Michael London for that nomination, and he was included in the original nomination slate submitted to the Court. After the deadline for nominations to the Fee Committee passed, two other attorneys submitted applications to be appointed to the Fee Committee. On November 21, 2018, the Court appointed a five member Fee Committee in CMO 141. This Committee has already begun working via email and telephone calls toward its duties and obligations. It has scheduled an in-person meeting.

On December 5, 2018, more than five weeks after the deadline to submit an application for appointment to the Fee Committee and two weeks after the Court entered CMO 141 establishing the Fee Committee, Ms. O'Connor has made a motion to expand the Fee Committee to include her. Leadership intends no criticism of Ms. O'Connor or her intentions; nor should the instant response to her request be interpreted as a criticism of the fine work she performed in this case. However, leadership submits that her request is tantamount to another "bite at the apple" because Douglas & London's initial representative, Michael London, was not selected to the Fee Committee. Moreover, if Ms. O'Connor's request is granted, it would certainly invite additional motions and reapplications from other plaintiffs' counsel.¹

¹ Maury Herman has filed a response to Ms. O'Connor's motion in which he supports Ms. O'Connor's request that the Fee Committee be expanded and also to opine that he too should be added to the Fee Committee. (Dkt. No. 2931). His response notes that Seth Katz is also a worthy candidate to be added to the Committee. Both Mr. Herman and Mr. Katz previously filed applications to the Court to be appointed to the Fee Committee. (Dkt. Nos. 2904 and 2908). The Court heard their arguments on November 16, 2018, carefully weighed their

The Court has ruled; the Fee Committee was formed; and the Committee is well underway in carrying out its duties.

Dated: December 10, 2018

Respectfully submitted,

/s/ Trent B. Miracle

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Plaintiffs' Co-Lead Counsel

requests, and ultimately, the Court elected not to appoint either. Just like Ms. O'Connor, Mr. Herman and Mr. Katz have made significant contributions to the advancement of the litigation. As mentioned above, however, leadership submits that the Court has made its decision and that no reversal or reconsideration is necessary or helpful.

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2018, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system which will automatically serve and send a notice of electronic filing to all registered attorneys of record.

/s/ *Brendan A. Smith*
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